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Group Art Unit: 1647

Examiner: Turner, S.

Attorney Docket No. B98-006-2

CERTIFICATE OF MAILING

I hereby certify that this corr. is being deposited with the US Postal Service as First Class Mail in an envelope addressed to the Comm. for Patents, Washington, D.C. 20231 on January 14, 2002.

Signed Richard Osman
Richard Osman

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PETITION.

The Commissioner for Patents
Washington, DC 20231

OFFICE OF PETITIONS
DEPUTY A/C PATENTS

Dear Commissioner,

We petition the Commissioner to rescind the finality of the Action mailed 10/10/01 in this application.

The finality of the Action mailed 10/10/01 is improper because the Action raises new issues and cites new art provided on a new PTO-892, neither of which was responsive to any amendment by us. The whole point of 35USC132(a) is to provide Applicants thorough and adequate notice, including reasons and references as may be useful in judging the propriety of the rejection, so that Applicants may adequately respond to the rejection with whatever amendments, remarks and/or evidence they desire.

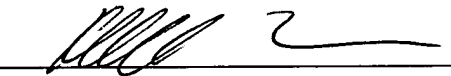
Here, the Examiner seeks to rely on a new document, never before provided to Applicants. That the document relates to a cosmid sequence (U88183) of which we previously advised the Examiner is inconsequential to the fact that the new document is new evidence, raising new issues for which we have not been provided notice as required under 35USC132(a). In particular, this new record includes creation date and other information which the Examiner newly expressly relies upon and which she has never previously presented to us. The proposed

finality would deny us our statutory right to rebut the newly offered evidence.

The Examiner may not cite new prior art in a final rejection (non necessitated by Applicants amendment) any more than she may do so in her answers, and for the same reason: "If the citation of a new prior art reference is necessary to support a rejection, it must be included in the statement of rejection, which would be considered to introduce a new ground of rejection." MPEP1208.01.

We hereby petition for and authorize charging to our Deposit Account No. 19-0750 all necessary extensions of time. The Commissioner is hereby authorized to charge any fees or credit any overcharges relating to this communication to our Deposit Account No. 19-0750 (order. B98-006-2).

Respectfully submitted,
SCIENCE & TECHNOLOGY LAW GROUP


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